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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of ComNet (USA), LLC for)	
Regulation as an Interexchange Carrier)	A. 16-08-019
Telephone Corporation Pursuant to the)	(Filed August 18, 2016)
Provisions of Public Utilities Code)	
Section 1013.)	

**REPLY OF COMNET (USA), LLC TO
PROTEST OF
THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION**

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October 11, 2016

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ComNet (USA), LLC ("ComNet"), by its attorney and pursuant to California Public Utilities Code (Cal. Pub. Util. Code) § 1013(g) and Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), hereby replies to the Protest of the Commission's Consumer Protection and Enforcement Division ("CPED") to the above-captioned application of ComNet for authority to provide resold interexchange services in the State of California as a prepaid debit/calling card service provider (the "Application").

As set forth herein, ComNet does not contest the factual grounds that the CPED has asserted, and urges the Commission to expedite its consideration of what penalties, if any, are appropriate under the circumstances. ComNet further urges the Commission to expedite its consideration of the above-captioned Application so as to allow ComNet to resume its card service to subscribers (or while this matter is still pending, to authorize ComNet to resume service on a special temporary basis), and to broaden its service offerings, as ComNet has previously discussed with the

staff of the Commission, to allow for the provisioning of Unified Communications service.¹

In its Protest, the CPED does not recommend denial of ComNet's Application, but urges the Commission to impose upon ComNet penalties of an undetermined amount on the grounds that (1) ComNet has been operating in California without Commission authority in violation of Cal. Pub. Util. Code §§ 885, 1001, and/or 1013; and (2) that ComNet failed to disclose in its Application that California and Michigan have revoked its telecommunications licenses, in violation of Rule Section 1.1. The CPED further requests that the Commission hold evidentiary hearings pursuant to Cal. Pub. Util. Code § 1013(g) in order to allow the CPED to submit record evidence to prove the above conclusions.

ComNet respectfully acknowledges that it did, in fact, continue to operate in the State of California after the Commission revoked its authorization on April 19, 2012, by Resolution T-17359, for failure to comply with surcharge payment requirements. ComNet further acknowledges that it neglected to disclose in its Application the revocation of its prior authorization and that of the revocation by the Michigan Public Service Commission of the company's operating license on April 14 of this year.

In light of these admissions, ComNet respectfully submits that the extended evidentiary hearings which the CPED requests are unnecessary and unduly

¹ Unified Communications ("UC") is not a telecommunications service *per se*, but the integration through software of real-time, enterprise communications services, some of which, such as voice communications, the Commission regulates. See https://en.wikipedia.org/wiki/Unified_communications. In correspondence with the Commission staff prior to the filing of the CPED Protest, counsel for ComNet has asked the Commission staff for guidance on what type of authorization ComNet will need to obtain in order to provide Unified Communications service.

burdensome. ComNet deeply regrets its failure to disclose complete and accurate information in its Application, and is fully prepared to meet with the CPED staff and other Commission officials, in person or telephonically, to discuss what sanctions may be appropriate under the circumstances. The extended evidentiary hearing which the CPED seeks, however, is simply unwarranted where, as here, the material facts which the CPED wishes to substantiate are uncontested. To require a full-blown hearing under these circumstances would only serve to divert the Commission's limited resources and prevent ComNet from re-entering the marketplace to continue to serve and improve service to its subscribers.

In lieu of the extended hearing schedule which the CPED proposes, ComNet respectfully urges the Commission to convene a meeting with ComNet and the staff of the CPED as promptly as possible,² at the offices of the Commission or telephonically, for the purpose of assessing what penalties are appropriate under the circumstances. While ComNet does not dispute the factual assertions the CPED has presented, as mitigating factors in assessing appropriate punitive action, ComNet would urge the Commission at this meeting to consider the following:

- In its Protest, the CPED does not advocate the denial of ComNet's Application for operating authority.
- The revocation of ComNet's prior authorization on April 19, 2012 was an official Commission action and a matter of public record. While ComNet regrets its failure to disclose the revocation in its instant Application, at the time of its filing ComNet in good faith assumed that the Commission was

² Subject to the availability of Commission staff, ComNet respectfully requests that this meeting be convened by month's end.

already aware of its own official action and that disclosure of this fact to the Commission was redundant and unnecessary. Again, ComNet regrets this oversight.

- On September 16, 2016, in an e-mail clarification to its response to CPED Data Request DR-TEL-00559-1, counsel for ComNet advised Ms. Donna Wong that, due to changes of address in 2010 and 2013, mail sent to the prior address of ComNet was misdirected, and the Company did not receive notice that its authorization had been revoked until February of this year. Nor did it receive outstanding invoices for user fees and surcharges from the Commission. Upon learning of the termination of its authorization, the Company contacted the staff of the Commission (Danny Tse, Penney Legakis, Miriam Sidney, Gavin Sood, Geraldine Carlin, Felix Robles and Joe Healy) and paid all outstanding invoices for user fees and surcharges. It has continued to do so and, to the Company's knowledge, all accounts are up to date, paid in full. Following correspondence with the Commission staff, the Company also retained counsel to obtain new operating authority. The staff of the Commission did not direct ComNet to terminate service to its existing customers, and ComNet did not do so.
- ComNet ceased doing business in the State of Michigan in 2015 and allowed its license to provide telecommunications services in the state to lapse. In light of these circumstances, at the time it filed the above-captioned Application, it did not believe that the revocation of its Michigan license earlier this year was a reportable event. ComNet regrets this oversight.

➤ Based on ComNet's decision to restrict its service offerings to prepaid card service, and the instructions on the Commission's website that providers of search service may file for registration as a non-dominant interexchange carrier, counsel for ComNet advised ComNet that it did not need to an application for a certificate of public convenience and necessity and that an application for NDIEC registration would be sufficient. See <http://www.cpuc.ca.gov/General.aspx?id=1019>. In Resolution T-17359, revoking ComNet's prior authorization, the Commission stated that "any telephone carrier whose operating license has been revoked may reapply for a new operating authority subject to: a) compliance with the Commission's licensing application rules (e.g. performance bond requirement), and b) reporting all gross intrastate revenue for past periods out of compliance, and c) pay all applicable fees and surcharges including a 25% fine on applicable fees and surcharges for past periods out of compliance." http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/164560.pdf.

To ComNet's knowledge, nowhere in its Resolution did the Commission require such carriers to file for CPCN authority. In any event, ComNet respectfully notes that in its Protest, the CPED states that it "agrees with the Commission's preliminary categorization of the proceeding." Protest, p. 5.

In light of the above, ComNet respectfully submits that, although it sincerely regrets its failure to comply with applicable Commission requirements, it has

consistently acted in good faith, without any intention to deceive the Commission, and that it has acted promptly to rectify its past conduct. Going forward, ComNet commits itself to complying fully with all applicable Commission requirements, and to any additional oversight which the Commission may deem appropriate.

ComNet also respectfully submits that an abrupt termination of service to its existing subscribers at this time would result in a substantial adverse impact on both ComNet and its subscribers. Accordingly, ComNet urges the Commission to authorize ComNet to continue providing service to its subscribers during the pendency of this proceeding. ComNet respectfully submits that such an action would serve the public interest and does not contravene the position of the CPED, which has not advocated the denial of ComNet's Application.

Finally, as noted above, ComNet wishes to expand the scope of its service offerings in California to include Unified Communications service, and seeks guidance from the Commission as to what type of authorization (CPCN or NDIEC Registration) is required. ComNet respectfully urges the Commission to respond to

this inquiry as soon as possible, so that ComNet can submit whatever additional applications or other paperwork as may be required.

Respectfully submitted,

/s/ Eric Fishman

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